Hawaiian Gazette

Every Wednesday Morning, AT \$6,00 PER ANNUM.

Malled to Foreign Subscribers at \$7.00. OFFICE-On Queen Street, in the old Custom House, Honolulu, H. I.

Printed and published by J. Morr SETTE, at the overnment Printing Office, to whom all business mountcations must be addressed.

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VOL. V---NO. 47.3

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HONOLULU, WEDNESDAY, DECEMBER 8, 1869.

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7-135

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Stop-cocks, India Rubber Hose-best a-ply, so is inserts of 22 and 30 feet, with complings and pipe complete. Bath-Tube, and also a very large stock of Tinwars of very description. Farticulor attention given to Ship-Work. Orders from the other Islands will be carefully attended to. Thankful to the Citizens of Honolula and the Islands generally for their liberal patronage in the part, we hope by strict attention to business to merit the same for the future. Merchants' Mutual Marine Ins. Co., Pocific Insurance Company, California Lloyd's, and Home Mutual Insurance Company.

COOPER AND GAUGER. Bog leave to inform Masters of Vessels and the public generally, that all losses of Vessels and Cargoss, incored by either of the above Companies, signisst perits of the seas and other risks, at or near the At the Old Stand, corner King & Bethel Sts. A Large Stock of thi Shocks and all kinds of Coopering Materials constantly in hand. He hopes by attention to luminess to merit a continuance of the patronage which he has herstofors enjoyed, and for which he now returns his thanks. dwich Islands will have to be verified by them. In HACKFELD 4 CO.

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Has constantly on hand and for sale at the Lowest Market Prices, a good assertment of the Best Refined Bar Iron, and the Best Blacksmith's Coal. 28-1y5 MERCHANTS' MUTUAL MARINE INSURANCE COMPANY COPPER AND TIN SMITHS.

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Continues the business on his old plan of settling with officers and seamen immediately on their shipping at his office. Having no direct or indirect connection with any outlitting establishment and allowing no debt to be confected in his office, he hopes to give as good satisfaction in the future as he has in the rast. H. HACKFELD & CO. HAMBURGH-BREMEN FIRE INSURANCE COMPANY. THE UNDERSIGNED having been

A appointed Agents of the above Company, are prepared to incore risks against Fire. on Stone and Brick Bulldings, and on Merchandise stored therein, so the most favorable terms. For particulars apply at the office of 5-ly5 F. A. SCHAEFER & CC. Insurance Notice.

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Foreign Marioe Insurance Company, (Limited), has received matractions to reduce the rates of Insurance between Honolalls and Parts in the Factic, and is now prepared to issue Policies at the Lowest Rotes, with aspecial reduction on Freight per Steamers.

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ONOMEA PLANTATION. Sugar and Molasses-Crop 1869 COMING IN, FOR SALE IN QUANTI-

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PRINCEVILLE PLANTATION. Sugar and Molasses-Crop 1869

Coming in, for sale in quanti-MING 10., the to suit purchasers, by WALKER & ALLEN. Agents. MAKEE PLANTATION.

New Crop of Sugar & Molasses Now coming in, and for sale in quantities to suit purchasers by C. BREWER & CO., WAILUKU PLANTATION.

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60d, Boat Nails, 1, 12, 14 a 2 inch, Pressed Nails, 2 a 22 inch, cosed Nails, 2 a 2½ inch, Cooper Rivets, 4, 7 a 8 hs, Copper Rivets a Burs, 2, 2, 2 a 2 inch, Gimp Tacks, Iron a Copper Tacks, of all sizes.

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heavy and strong, Protoxide of Iron, Poland's White Pine Compound, Pails, Tubs, Brooms, Rtc., Etc. Downer's Kerosene Oil, From the Boston House.

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CHARGES REASONABLE. ties visiting the Volcano via Hilo, can procurals warranted to make the journey, by D. H 1000K, Eeq. 27-1y5,

BARTLETT SALOON, Corner Hotel and Fort Streets. HUGHES & DUNNE

BEFORE HARTWELL, J., NOV. 17, 1869.

The Marshal's return to the writ was as

On the Patition of Wong Kwai, in behalf of

Apuna, for Writ of Habeas Corpus.

"In obedience to within writ, I do bring into this Honorable Court the body of the within named Apuna. Said Apuna was committed to my custody on the 12th day of August, A. D., 1869, by virtue of a Mittimus, to me directed, from the 4th Judicial Circuit of the Hawaiian Islands, in words and figures as follows, to wit: "Circuit Court of the Hawaiian Islands,

""Circuit Court of the Hawaiian Islands, Nawiliwili, August Term, A. D., 1869.—To W. C. Parke, Esq., Marshal of the Hawaiian Islands, Greeffog: Whereas Apuna, (P.,) has been convicted at the present Term of this Court, of the crime of selling oplum without a license, and has this day been sentenced by the said Court to pay a fine of Three Hundred (\$300.00) Dollars, with costs of Court, Seventy-seven 80-100 (\$77.80) Dollars, "Therefore, you are bereby commanded to receive the said Apuna into your custedy, and see the above sentence duly executed "Witness the Honorable H. A. Widnemann, 2d Associate Justice of the Supreme Court, at Nawiliwili, this 12th day of August,

Court, at Nawiliwill, this 12th day of August, '[Scal.] (Signed,) DUNCAN MCBRYDE,

"And I do hereby return this writ con plied with, this 8th day of November, A. I 1869. W. C. PARKE,

"And I do hereby make further return, that the said Apuna now is, and has been held to hard labor since the commitment to my ensuing." my custody. W. C. PARKE, Marshal."

The petitioner's traverse to the Murshul's return denies that the Court had any authority so to sentence, or that there was any crime by the prisoner committed to authorize or justify the sentence imposed, or the issuing of such mittimus, the same not being justified by the law under which he was convicted. viz : selling opium without license ; denies that the said Mittimus is the process of the Circuit Court of the Fourth Judicial District, as it does not bear teste of said Court; de nies that the Marshal, under said process, has authority to detain and imprison said Apuna at hard labor, or in any other manner, as he is commanded to execute the sentence, and imprisonment, or imprisonment at hard labor, forms no part of the sentence nor of the command in said mittimus; denies that the Marshal has, under said writ, or by authority of any law of this Kingdom, power to execute a sentence in any manner for fine with costs; denies that the Marshal has authority to execute a sentence for fine, or fine and costs, at hard labor, unless such sentence is so pronounced by the Court, and recorded

in the mittimus. PER CURIAM: The Constitution provides that "The privilege of the writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when, in cases of rebellion or invasion, the public safety may require it;" that "no person shall be subject to punishment for any offense, except on due and legal conviction thereo in a court having jurisdiction of the case; that "no person shall be deprived of life, liberty, or property, without due process of law;" that "every person has the right to be secure from all unreasonable searches and seizures of his person," &c.; that "each member of society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to law."

restraint." [Sec. 855 Civ. Code.]

essentially alike, and are all in substance the same with the English statute of 31 Car. II. otherwise described, is the writ ad subjicienrelease persons from illegal confinement. paid out of the Treasury of the Kingdom. The writ was known in English law long anterior to Magna CHARTA, which secured on facts not before me; if such a case should

40. "Nulli vendemus, nulli negabimus, aut differemus, rectum aut justitiam." 39. "No freeman shall be taken or impris-oned, or dispossessed, or outlawed or ban-ished, or in any manner destroyed; nor will we convict or sentence him, except by lawful judgment of his peers, or the law of the

40. "To none will we sell, to none will we deny or postpone, right or justice." Lord Chatham, in speaking of these words In the House of Peers, used this memorable language: "They (your ancestors,) did not say, these are the rights of the great barons, or these are the rights of the great prelates. of the times, Nullus liber home, and provided as carefully for the meanest subject as for the greatest. These are uncouth words, and sound but poorly in the ears of scholars; ing which interests us all; they deserve to be remembered, they deserve to be inculcated In our minds, they are worth all the Classics."

secured, and the three together form " The Bible of the English Constitution." In 1679, the Habess Corpus Act of 31 Car. II, was passed. The Act of 56 Geo. III, extended the power of the writ, and enabled the judge violation of revenue laws. A sentence into the trath of the facts alleged therein. It is common to speak of the privileges thus secured, but no sound jurist or thinker ever but common rights under the law of England. to execute a sentence never pronounced. The rights of persons in this Kingdom, un-

English guarantics and enactments, with

with the original writ, as secured and vivified by the English Acts. Bills and Charters. Anything less than this would make the provisions therefor in our Constitution and Statutes hollow and meaningless, and would be contrary to sound rules of legal construction. I must, therefore, be guided by these lights. and by the decisions of English and American Courts, concerning the law of Babeas

Corpus; and I think the practice of this

Court has never been opposed to this view.

By the Act of 31, Car. 2, persons commit-

ed or detained for any crime but treason or

{\$6.00 PER YEAR.

felony (if they are not persons convicts or in execution by legal process) have a right to be brought before the Court on Habers Corpus, and the Court within two days must discharge the prisoner, "unless it shall ap pear that he is detained upon a legal process order or warrant out of some Court that hath jurisdiction." The true rule to be gathered from the authorities is, that the function of this writ does not supersede the functions of Writs of Error and Certiorari, Bills of Exceptions and Appeals. The alleged errors of a trial should be reconsidered only by the appellate Court authorized by law to review them. No power is given, and perhaps none exists, to review the deeision of a judge discharging a prisoner on Habeas Corpus. Hence the necessity of exercising jurisdiction in such cases with discretion, and according to established principles. The Court will rarely use the Writ of Habeus Corpus to effect a reversal of judgment rendered by a Court of competent jurisdiction, the mittimus showing a prima facie legal conviction. The officer's return, or the record brought up on certiorari, ought to show these legal requirements. If the process is merely voldable, and not actually rold, it is regarded as good authority for the

ment shall be reversed by the appellate Court. The petitioner's plea to the officer's return. neither, in legal intendment, traverses, nor confesses and avoids the facts alleged; but it is a demurrer to the legality of the imprisonment. It is claimed that the imprisonment, either at hard labor or otherwise, is illegal.

confinement of the prisoner, until the judg-

1. Because the mittimus is not duly authenticated as the process of the Court. 2. Because the law does not authorize the

imposing of costs as part of the sentence. 3. Because the mittimus does not order the Marshal to imprison at hard labor or

otherwise. 4. Because the law gives the Marshal no discretion or authority to imprison at hard

labor, or otherwise. The first objection has no force, and was in fact not insisted upon. No Statute requires the process to bear teste of the presiding justice; the seal of the Court with the official signature of the clerk and the signature of the justice of the Court who in fact presided, are sufficient.

The Statute penalty for this offence is a fine not exceeding five hundred dollars, or imprisonment at hard labor for a term not exceeding six months. A "fine of \$300, with \$77 costs of Court," is a sentence within this Statute. If the mittimus should command the Marshal to imprison until the payment of an extreme fine of The Statute gives Justices of this Court, \$500 and \$77 costs, the Statutes perhaps in Chambers, jurisdiction "to issue writs of might sanction such order. The provision habeas corpus, for inquiring into the cause for the discharge of a poor convict at the of any alleged unlawful imprisonment or end of one year, if he is unable to pay the What is this Writ of Habess Corpus? In them," for which he "shall have been immany of the United States, there are statutes prisoned," would seem to imply the power defining its nature and force, but they are all to adjudge payment of costs. (Sec. 2, Ch. 51, Comp. Penal Code.) So does Sec. 5, Ib., which makes the officer liable if he allows It is unnecessary to refer to the different | the escape of any person undergoing "sen-Writs of Habeas Corpus ad testificandum, ad tence of Court, for payment of any sum as a satisfaciendum, etc., which are so named to fine, forfeiture or costs." On the other denote the purpose for which they were hand, Sections 6 and 7 lb., provide for exeissued. The writ always intended, if not cution to issue on the convict's property, for costs, and that if they are not paid by dum et recipiendum, which was designed to him or out of his property, they "shall be

the acknowledgment of common rights as arise, it would properly be reviewable on somews:

39. "Nullus liber homo capiatur, vel insprisonetur aut dissaisiatur aut utlagetur, aut aliquo modo destruatur; nec super cum bimus, nec super cum mittemas, nisi per legale judicium parium suorum, vel per legale judicium parium suorum, vel per legale in the dissaisiatur aut utlagetur, aut fine la not paid immediately following the offender's conviction, he shall be committed to prison, there to remain at hard labor, or otherwise in the dissatistic first the succession of the state of the same chapter of the Penal Code, "when a fine la not paid immediately following the offender's conviction, he shall be committed to prison, there to remain at hard labor, or otherwise in the dissatistic first the same chapter of the Penal Code, "when a fine la not paid immediately following the offender's conviction, he shall be committed to prison, there to remain at hard labor, or otherwise in the dissatistic first the same chapter of the Penal Code, "when a fine la not paid immediately following the offender's conviction, he shall be committed to prison, there to remain at hard labor, or otherwise in the dissatistic first the same chapter of the Penal Code, "when a fine la not paid immediately following the offender's conviction, he shall be committed to prison, there to remain at hard labor, or otherwise in the dissatistic first the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the same chapter of the Penal Code, "when a fine labor is the s magistrate, until such fine is paid, or collected out of the offender's property." It may be inferred from this mittimus that the fine was not paid; but imprisonment at hard labor can not be inferred. Nothing can be presumed against the liberty of the person. The discretionary power of the Court to commit the offender to prison, "there to remain at hard labor, or otherwise," was not exercised in this instance, and it is not a power which can be delegated to another. The power to pronounce the entire sentence, or to try the prisoner, may as well be delegated. No, my lords: they said, in the simple Latin The authority of the Marshal to hold this prisoner as he is doing, is not under this mittimus. Is it under the general law?

I will not, however, volunteer an oninion

The Civil Code provides: "When any person shall be sentenced to pay a fine, and to neither are they addressed to the criticism of be imprisoned until such fine is paid, the scholars, but to the hearts of freemen. These time of his imprisonment shall be deemed to three words, Nullus liber home, have a mean- discharge his tine, at the rate of twenty-five cents a day." [Sec. 22.] "Every person vision of the revenue laws shall, in case he After the Charter of Runnymede, the Pe- fail to pay such fine, be imprisoned at hard tition of Right and the Bill of Rights were labor until such fine be paid or remitted, or until be shall have carned a sum equivalent to such tine." [Sec. 665.] It is enough to say of these statutes that this case comes under neither of them. This is not a case of before whom the writ is returned, to loquire fine and imprisonment is expressly provided for in the former section, and no power is there given for the Courts to extend a sentence beyond the penulty affixed by law for admitted that these privileges were anything each particular offense, nor for the Marshal By Sec. 205 of the Civil Code, the Minister of

der writs of Habeas Corpus, are, in my the Interior, with the approval of the King opinion, as fully secured by Constitutional in Cabinet Council, "may prescribe roles and Statutory provisions, as if the famous and regulations for the government and discipline" of prisoners. It was suggested that merely verbal alterations, were spread upon the prison rules authorized the Marshal to our statute books. The Writ of Habeas Cor- Imprison Apuns at hard labor; but the sug-

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sation of the rules themselves. to this portion of the argument, in which it was urged upon the Court that judicial knowledge must be taken of the existence and nature of such rules, I feel bound to say that I am aware of Constitutional provisions which make vold any rules going to the extent suggested. The discipline of convicts does not include the power to attach penalties not prescribed by Statute, and imposed by the Court. It is a right of every accused person to know beforehand, what penalty may e imposed by law for the crime charged. It is the right of a person convicted of crime to be informed, in open court, of the sentence imposed. The statutory power to restrate and govern prisoners has been exercised, however, only within its proper legal limits.

I find no authority, therefore, for the Marshal to execute a sentence of imprisonment at hard labor in this case. Nor have I any power to remand the prisoner, in order that such a sentence may be imposed, if deemed The petitioner's counsel argued that a sen-

tence of imprisonment could not have been passed which should exceed the limit of six months, or which, by force of other Statutes, should work imprisonment exceeding six months. The question is not properly before me now, but it should be carefully considered by magistrates, in like cases, in determining what scutence to impose.

Let an order be made discharging the

R. H. Stanley for petitioner. Attorney-General 8. H. Phillips for the Marshal.

Salamanders.

The Sanborn Patent Safe is a late invention which claims, by the introduction of water within its walls, to render secure against fire all papers, books, etc., that may be placed therein. One of these Safes we have seen in a counting-room of one of our merchants, and we hear that preference was given to it, over every other kind of safe, by the agent who was charged to send out the very best article made.

Its peculiarity consists in its having copner vessels, filled with water, placed in a lining between the inner wall and the bookcase. Fusible solder scals these vessels, and, when subjected to a fire, the solder melts prior to the boiling of the water. The heat fills the various chambers containing the water with steam; this steam, as it becomes dense, meets the caloric coming in from the safe's sides, expands, and passes out at the cracks about the door.

We notice that a trial, in San Francisco, was made of several safes, of which the

Chronicle thus speaks:

"Yesterday was what may be termed a warm day for at least three safes in this city. At a quarter to 6 o'clock, yesterday morning, three safes were surrounded with wood and the match of the incendiary applied. The safes in the flames were of the following make: Tilton & McFarland, Boston; J. Kittredge, San Fraecisco, and the Sanborn Patent Steam Safe, of New York. The safes met with the following results: At 11 o'clock, the Kittredge safe began to show signs of inward destruction. Smoke was seen issuing from the cracks about the door, and it was evident that its contents were being consumed. No more wood was, therefore, pilied around this safe. The Tilton & McFarland safe was the next to show signs of inward decay. At moon, smoke was plannly visible, issuing from its cravices. It was allowed to keep its place in the flames with the Sanborn safe till 2 o'clock, when the hose was brought to play upon the burning mass, and the fire Chronicle thus speaks:

to play upon the burning mass, and the fire extinguished. "The work of opening the safes was neomplished as soon as circumstances was necomplished as soon as circumstances would permit. The first safe opened was the Kittredge. Its contents presented the appearance of a black mass of cluders and ashes. Next, the door of the Tilton & McFarland safe was burst open, and its interior presented a similar appaerance to its predicessor. The Sanford Patent Steam Safe was now pried open, and its interior presented quite a concentration of the predices of the safe open. Sanford Patent Steam sale was now pried open, and its interfor presented quite a contrast to those of the other two. Books and cards were drawn forth uninjured. The carpet on its floor was unsinged, and its entire wood work was in as complete a state of preservation as if it had been stowed away in a storehouse, and not subjected to an eighthour furnace.

a storehouse, and not subjected to an eighthour furnace.

"The scene of this trial test was witnessed throughout the day by hundreds of our citizens. The extreme heat prevented many from venturing near the burning mass. As the time for opening the safes drew nigh the crowd increased, and immediately after the busring open of the first door a general rush was made to see the result. A couple of policemen who were present were uttorly unable to stem the crowd of enrious ones. Some came down the inclined plane on the n-rrow board pathway, while others tumbled over the embankment. The general feeling of the crowd, as they stood amid the water and ashes viewing the safes, was well expressed by a country gentleman who stood with eyes open viewing the debris and exclaimed: "That 'ere safe is a buster."

GENERAL McManon and the Paraguayan Immoduto.—A dispatch dated Washington, November 5th, says: "General McMahon was before the House Sub-Committee
on Foreign Affairs yesterday and gave his
story of the causes of the Paraguayan war.
He said it was instituted by Brazil to extend
monarchy and shavery. He himself was well
treated by Lopez, who was favorably disposed toward the United States. The Bliss
and Masterman difficulty had been settled
before he zrrived in Paraguay. Masterman
was an English subject, and he would not
have felt at liberty to inferfere in his case.
His conduct as Minister had been indorsed
by the State Deparment.

The most remarkable railroad in Germany and Europe is the new Black Forest Road, which will be completed within four years. Between Hornbergh and St. George, situated 2870 feet above the level of the sea, and but four miles distant from Hornbergh, the railroad ascends nearly 2,000 feet, and passes through 27,000 feet of innuels. Eleven thousand feet of the latter have been completed during the last two years. The truly Cyclopean work on the road is progressing rapidly, and attracting thousands of visitors, who flock together from all parts of Southern Germany and Switzerland.

Marganat photographs have become quite fashionable at Paris lately. In windows, where such things are exhibited, may be seen, at this time, portraits of the Detchesses of Madrid and de Mouchy, and the Marchloness of Galliffet, each one with a babe on her kness. The most enterprising photographers, here

Punca announces "The Gent She Jilted, by the author of "The Girl He Married, "Strings of Barley-sugar," a sequel to "Rop of Sand;" "Downy as a Door, Duck," a so clusion of "Simple as a Dore," and "Both Black-becties," by the author of "Burat Be-terdies.